IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1562 OF 1995

Shri K.S.Nayak .. Petitioner.
Vs.
Canara Bank, Bombay .. Respondent.

None for the petitioner.
Mr.R.S.Pai with Ms.Sushma Joshi i/b M/s.Haresh Mehta for respondent nos.1 and 2.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.
DATED : MARCH 23, 2006.

P.C:

. The petitioner was employed as a Senior Manager with the respondent - Bank which is a Nationalised Bank. He had remained absent continuously from 6.4.1987 till 23.12.1987. He was, therefore, proceeded against Regulation No.6 of the Canara Bank Officer Employees (Disciplinary and Appeal) Regulations, 1976 ("D & A Regulations" for short). It was noted that he was remaining absent on false grounds and without justifiable cause or reason. By such acts he had failed to perform the duties with devotion and deligence and acted in a way unbecoming of a Senior Manager of the Bank and thereby contravened Regulation 3(1) read with regulation 24 of the Canara Bank Officer Employees (Conduct) Regulations, 1976 and committed

a misconduct under the D & A Regulations. After conducting the enquiry he was compulsorily retired from the Bank's service vide the order dated 23.12.1989 by agreeing with the findings of the enquiry officer under regulation 4(a) of the D & A Regulations. He submitted an appeal against the said order and it was dismissed on 21.6.1990 by the Executive Director as the appellate authority. The petitioner, thereafter, submitted the review petition to the Chairman and Managing Director on or about 29.12.1993 and the same was also dismissed, as per communication dated 25.2.1994 addressed to the petitioner. The order of compulsory retirement and subsequent orders confirming the same have been challenged in this petition.

2. The learned advocate for the petitioner was allowed to withdraw his appearance on 18.12.2003. Thereafter notice was issued to the petitioner to cause his appearance either in person or through an advocate. Inspite of the service of the said notice the petitioner has not caused his appearance. Today none is present for the petitioner.

3. The Enquiry Officer in his report dated

8.11.1998 recorded the following conclusions:

> "From the above analysis it is clear that Shri K.S.Nayak (2481), the Chargesheeted Officer Employee has been absenting himself for a very long time on false grounds and without any justifiable cause or reason.
>
> During this whole period from 6.4.87 to 24.12.87 and beyond that - his attitude towards the prescribed leave rules of the Bank has been very casual, and indifferent and on few occasion even wanton.
>
> I therefore, find him GUILTY of the charges levelled against him."

. A copy of the Enquiry Officer's report was made available to the petitioner and we have noted that the disciplinary authority, being the General Manager, has duly applied his mind to the reasoning set out by the Enquiry Officer in his report. The first appellate authority i.e. Executive Director to whom the appeal was submitted passed a reasoned order on 21.6.1990 and rejected the appeal. The Enquiry was conducted in a fair manner and in compliance with the principles of natural justice. The enquiry was adjourned from time to time but the petitioner failed to attend the enquiry and as a last resort the Enquiry Officer proceeded exparte. The appellate authority also noted that at the at the transferee place the petitioner did not report and, therefore, he was not paid salary. He had exceeded the delegated powers in sanctioning

loans/advances and has not obtained prior permission/sanction to grant such loans. The appellate authority was thus satisfied that all the charges levelled against the petitioner were clearly established in the enquiry conducted and administered. The appellate authority also held that taking into consideration the gravity of the misconduct and extenuating circumstances the punishment imposed on the petitioner in respect of all the charges was just and proper.

4. The petitioner's representation to the reviewing authority submitted on or about 29.12.1993 i.e. after two and half years from the dismissal of his appeal was again considered by the Chairman and Managing Director of the respective bank, who agreed with the reasoning set out by the Disciplinary Authority as well as the Appellate Authority and held that there was no case set out to cause interference in the order of the General Manager.

5. The enquiry proceedings have been placed before us and on perusal of the same it is clear that the petitioner failed to participate in the enquiry for the reasons solely attributable to him and in the exparte enquiry conducted the Bank had

placed all the material evidence like medical certificates etc. and examined the doctor. We, therefore, find no substance in the contentions that the enquiry was vitiated as it was conducted exparte. The evidence on record as noted by the Departmental Authorities supports the findings of the enquiry officer and once it is held that the Managerial category employee remained absent without permission and for false reasons, undoubtedly he is guilty of an act of serious misconduct unbecoming of such an officer. To award the punishment in a case of grave misconduct is a managerial prerogative and it cannot be a subject matter of judicial review unless it is shown that the punishment was palpably harsh or grossly disproportionate to the nature of charges preferred against the delinquent. It is now well settled that the High Court in exercise of its power of judicial review would not normally interfere with the quantum of punishment unless the same is found to be grossly disproportionate and the doctrine of proportionality can be invoked only under certain situation. The punishment must be found to be shockingly disproportionate. In the case of **V.Ramanna Vs. A.P.SRTC and Others J.T. (2005) S.C. 134,** it has been stated that "The common threat running through in all these decisions is

that the Court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. In view of what has been stated in **Wednesbury’s case (supra)** the court would not go into correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision". Considering in any way, to our mind the authorities below have examined all the grounds raised by the petitioner against the impugned order and confirmed the same for compulsory retirement. We do not find any reason to take a different view then the departmental authorities have taken and, therefore, this petition must fail.

6. The same is hereby dismissed. Rule discharged. No costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE, J.)**